

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5899 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ADAMBAI M PATEL & ANR.

Versus

G S R T C & ANR.

Appearance:

MR PV HATHI for Petitioners

MR KAUSHAL THAKKAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners, in all two, filed this Special Civil Application before this Court and the prayer has been made for quashing of annexure 'F', the order of respondent No.2, Divisional Controller, Gujarat State Road Transport Corporation, Baroda, under which the petitioner No.1 herein has been denied the salary due to

him for a period of 19 months. A further prayer has been made by the petitioners that the respondents be directed to confer all service benefits available to the petitioners as if they were on duty for all purposes from 15th November 1979 till they resumed duties at Bharuch Depot after the judgment of this Court dated 31st March 1982.

3. The facts of this case, in brief, are that the petitioners alongwith one Ibrahim Yusuf filed a writ petition being Special Civil Application No.3149 of 1979 before this Court challenging thereunder the order of the respondent dated 12th November 1979 under which they were transferred from one place to another place. The said writ petition is stated to be admitted and that this Court has been pleased to grant mandatory interim order in favour of the petitioners after hearing the counsel for the Corporation. Against that interim order, the Corporation filed Letters Patent Appeal and in the said LPA the Corporation agreed to pay the salary to the petitioners without taking them on work. On 31st March 1982, this Court has allowed the Special Civil Application No.3149 of 1979 and the order of transfer of petitioners has been set aside. Further direction was given by this Court in the said judgment with regard to the petitioner No.2 of that petition with regard to payment of salary for the period for which he was outside the country. The petitioners have come up with the case that the direction given by this Court in Special Civil Application No.3149 of 1979 was not complied with and as such individually the petitioners filed a Contempt Petition before this Court. The Contempt Petition was disposed of with the direction that the petitioners to take remedy other than the Contempt. The present writ petition is filed by two of the petitioners in the previous writ petition, namely the petitioners No.2 and 3, mainly for non compliance of the order of this Court in the earlier proceedings in their favour. This Special Civil Application has been admitted after notice to the respondents on 23rd December 1983 but till date it is really surprising and shocking that none of the respondents have come to file the reply to this petition and as such the averments made therein by the petitioners stand uncontroverted.

4. However, Mr. Kaushal Thakkar, learned counsel for the respondents has made oral submissions on behalf of the respondents. Mr. P.V. Hathi, learned counsel for the petitioners contended that the respondent has committed serious illegality in passing the order annexure 'F' denying the benefits of salary to the

petitioner No.1 for the period of 19 months. It has next been contended that even if the petitioner No.1 for the reasons stated in the order annexure 'F', was not found to be entitled for the salary for the aforesaid period, that period should have been adjusted against the leave due and the order of taking that period to be "Leave Without Pay" should not have been made. The learned counsel for the petitioners further contended that this order is made by the respondent No.2 in total disregard and defiance of this Court's order made in Special Civil Application No.3149 of 1979 decided on 31st March 1982. So far as the case of petitioner No.2 is concerned, the learned counsel for the petitioners contended that the approach of the respondent to deny him the benefit of leave encashment for the period from 15th November 1979 to 31st March 1982 is wholly perverse and arbitrary. The authority has proceeded on the ground that no leave to his credit was there on 12th November 1979 which is absolutely a perverse approach.

5. The learned counsel for the respondent Shri Kaushal Thakkar, on the other hand, supported the orders passed by the respondent.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. From the document annexure 'J', which has been filed by the petitioners on the record of this petition, it transpires that the salary of petitioner No.2 has been reduced from the month of April 1983. This appears to have been done as apprehended by the petitioner No.2 that the period from 15th November 1979 to 31st March 1982 has been treated to be a break in service for the purpose of increment, leave encashment, bonus etc.

8. First of all, I proceed to deal with the case of petitioner No.1, since deceased. The learned counsel for the petitioners does not dispute that the petitioner No.1 has gone out of India. What he contended was that he has gone out of India on a pilgrimage to Mecca and Madina. The petitioner No.1 remained out of India from May 1980 to December 1981 and he has been given sufficient opportunity to prove that he was in India during the said period or for any part of the said period. Despite of giving the opportunity to establish the said fact which was within the personal knowledge of the petitioner No.1 and he has all the material evidence in his possession, the petitioner No.1 has not availed of that opportunity. For non production of evidence despite of opportunity being given, the respondent No.2 has not committed any

error, much less an error apparent on the fact of the order impugned in holding that he remained out of India for the aforesaid period. It is true that the Division Bench has given direction on the consent of the Corporation that the petitioner No.1 shall be paid the salary pending disposal of Special civil Application and work will not be taken from them, but it was not permissible for the petitioner No.1 to go out of India and remain there for more than one year. Even if it is taken, for the sake of consideration that the petitioner No.1 has gone on pilgrimage, then he should have taken a prior sanction or permission either from his employee or from this Court where the Special Civil Application was pending, which has not been done in the present case. In view of these facts on which the petitioner No.1 has not raised any issue, the respondent No.2 has rightly held that the petitioner No.1 is not entitled to any salary for the period from May 1980 to December 1980. But I find sufficient merits in the contention of the learned counsel for the petitioners that this period could not have been treated as leave without pay. while deciding the previous petition, this Court has noticed the fact that the petitioner No.1 remained out of India and as such the matter has been left at liberty of respondent No.2 to decide the case of petitioner No.1 for this period and this court has further observed that in case the authority holds that the petitioner No.1 remained out of India, then the absence period should be adjusted against the ordinary and/or extra ordinary leave so that there may not be any break in service. Option has been given to respondent No.3 to adjust the aforesaid period of petitioner No.1 against leave due during which he remained outside the country. Leave without pay certainly comes under the category of extra ordinary leave and the impugned order to that extent does not call for any interference of this Court, but it could not have been and should not have been taken as a break in service. The order dated 5.3.83 nowhere states that this period has been treated to be a break in service but that is the only apprehension of the petitioner No.1 and that apprehension may be without basis as nothing has been produced on record to show that any adverse order has been made by the respondent against him. But it is in the larger interest that it is hereby clarified that it may not be treated as a break in service.

9. So far as the case of petitioner No.2 is concerned, I find sufficient merits in the contention of the learned counsel for the petitioner that the order of this Court in the earlier petition has not been given effect to. It is not the case of respondent that he has

gone out of India or he remained elsewhere. The petitioner No.2 was given salary for all this period and the order of transfer has also been ultimately set aside by this Court, which position is not in dispute. There may be some ground for denying salary to petitioner No.1, but there is no ground whatsoever for the respondent nor there is any justification in not giving to the petitioner No.2, all benefits of increment, leave encashment, bonus, etc. The respondent has failed to give out why his salary has been reduced under annexure 'J'. From this document it can be inferred that it has been done as the petitioner No.2 has not been considered to be continued in service. The period from 15th November 1979 till 31st March 1982 has been treated to be break in service, which was not permissible. For all the purposes, the petitioner No.2 should have been considered in the services and he should have been given all the benefits for which he was entitled. The encashment of leave was one of the benefits for which he was entitled. Under annexure 'I', that claim has been denied, and I am satisfied that this approach of respondent No.2 is wholly perverse. The petitioner No.2 has claimed benefit of encashment of leave due during the period from 15th November 1979 to 31st March 1982 and for this claim there is no relevance of date 12th November 1979 at all. The denial of claim for encashment of leave on the aforesaid ground is wholly arbitrary and unjustified.

10. In the result, this writ petition succeeds and the order annexure 'I' and annexure 'J' and 'J-1' are quashed and set aside. It is hereby ordered that the petitioner No.2 shall be entitled for all the benefits for the period from 15th November 1979 to 31st March 1982 and he shall be treated on duty for all the purposes and benefits during this period. The claim of the petitioner NO.2 for encashment of leave which would have been to his credit for the aforesaid period should be considered afresh. It is further ordered that the period of the petitioner No.1, the period of 19 months, shall not be considered as a break in service. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)